Buchanan Ingersoll & Rooney PC

Water Laws and Regulations
Water Utility Regulation

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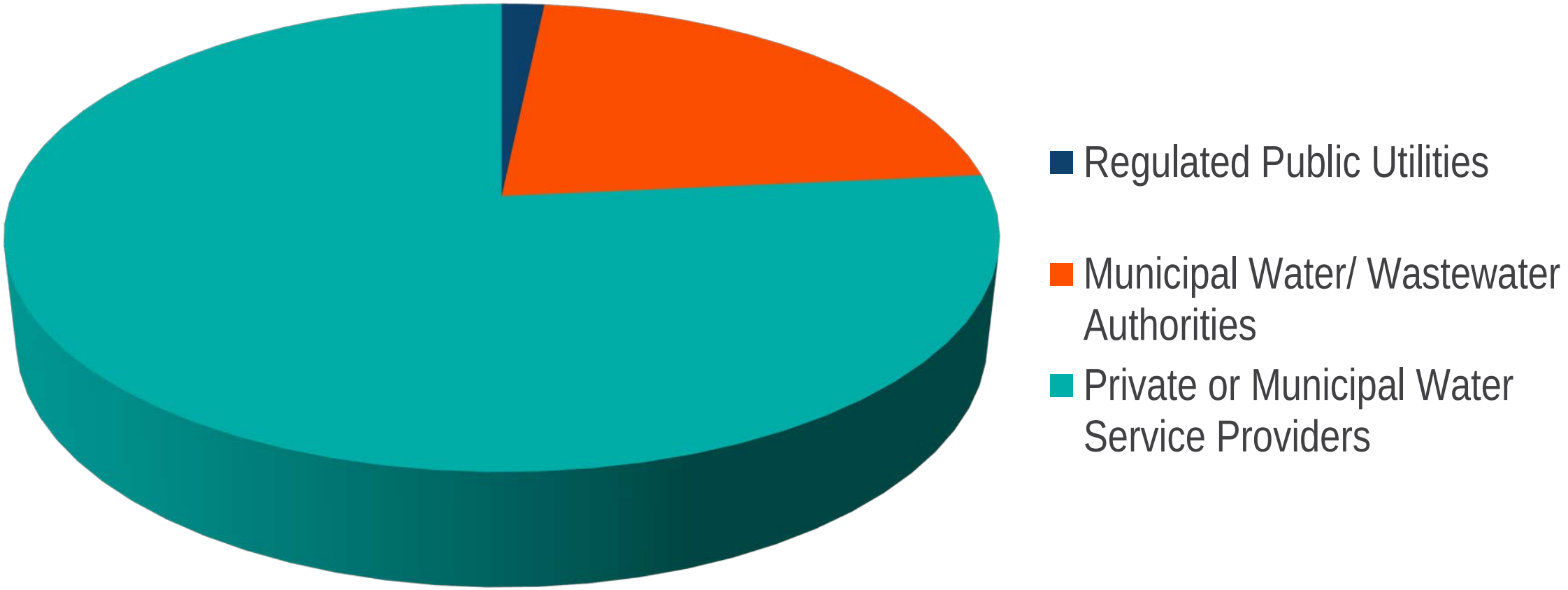
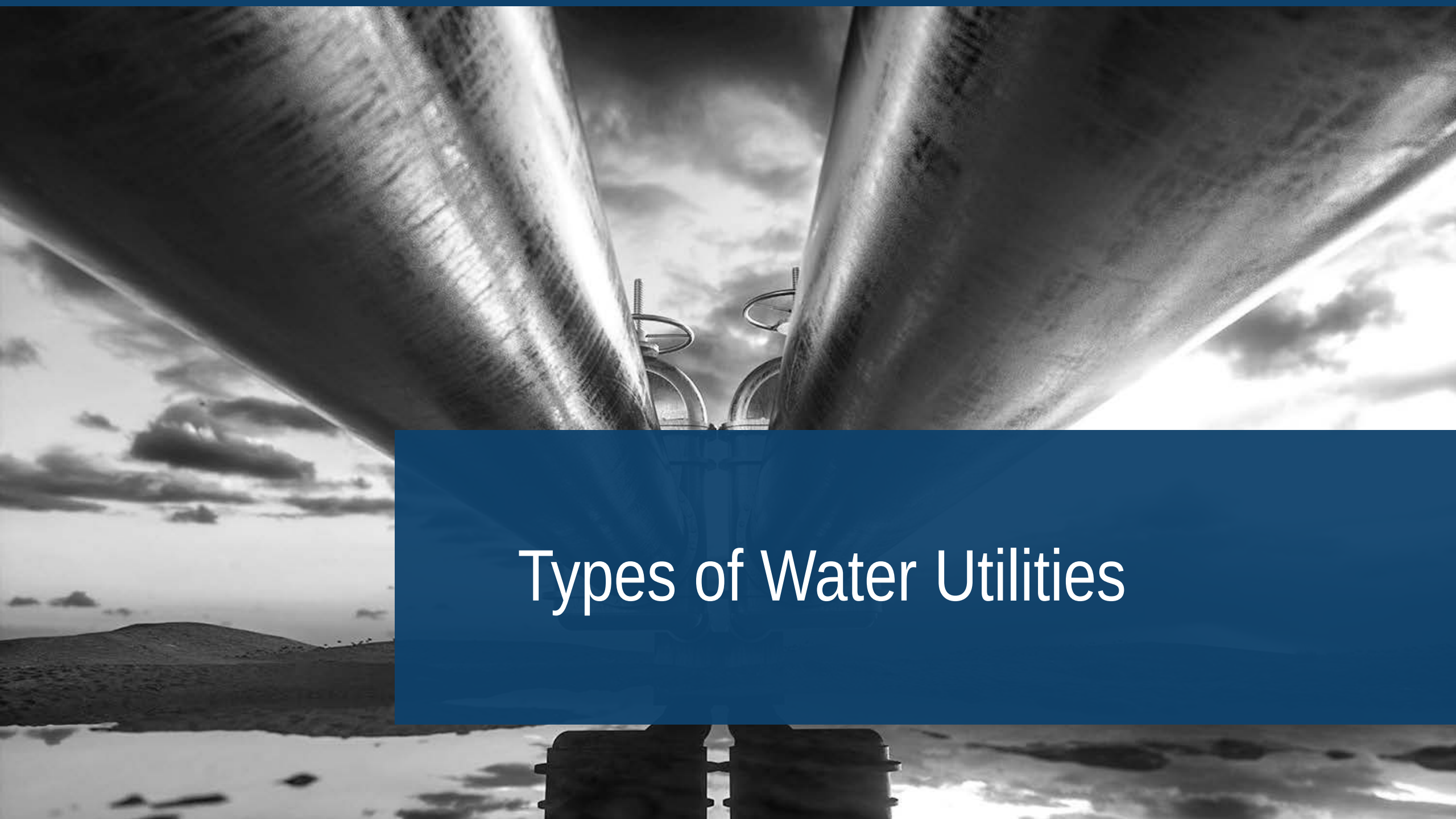
Water Service Providers in Pennsylvania

- Regulated Public Utilities: 150[1]
- Municipal Water/Wastewater Authorities: ~2000[2]
- Private or Municipal Water Service Providers: ~7000[3]

1. See Pennsylvania Public Utility Commission website, http://www.puc.state.pa.us/consumer_info/water/wastewater.aspx
2. As reported in WHYY Keystone crossroads, March 12, 2016, https://whyy.org/articles/lawmakers-more-oversight-for-pennsylvanias-2000-municipal-authorities/
3. Pennsylvania Department of Environmental Protection website indicates the Department is involved in regulating water quality for 9200 public water systems. See http://www.dep.pa.gov/Business/Water/BureauSafeDrinkingWater/Pages/default.aspx

Water Service Providers in Pennsylvania





Types of Water Utilities

Types of Water Utilities

- What is a Public Utility?
- Includes more than “water” public utilities
- Defined in Section 102 of the Pennsylvania Public Utility Code, 66 Pa. C. S. § 102:

> “(1) Any person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for:
>
> (ii) Diverting, developing, pumping, impounding, distributing, or furnishing water to or for the public for compensation.
>
> (vii) Wastewater collection, treatment, or disposal for the public for compensation.”

Types of Water Utilities

- Regulation of Water Utilities in Pennsylvania
  - The PaPUC is created by the Public Utility Code, 66 Pa. C. S. § 101 *et seq.*, and exercises jurisdiction over water and wastewater public utilities.
  - That jurisdiction is exercised under the Public Utility Code.
  - PaPUC also regulates municipalities that provide water and wastewater services outside of their municipal boundaries under Chapter 11 of the Public Utility Code:

    § 1102. Enumeration of acts requiring certificate.

    (a) **General rule.--** Upon the application of any public utility and the approval of such application by the commission, evidenced by its **certificate of public convenience** first had and obtained, and upon compliance with existing laws, it shall be lawful:

    (5) For any municipal corporation to acquire, construct, or begin to operate, any plant, equipment, or other facilities for the rendering or furnishing to the public of any public utility service beyond its corporate limits.

Regulation of Utility Service Areas

Regulation of Utility Service Areas

- Scope of PaPUC Regulation of Water Public Utilities
  - PaPUC broadly regulates the rates, services and facilities of water and wastewater public utilities under Sections 1301 and 1501 of the Pa Public Utility Code:

    § 1301. Rates to be just and reasonable.

    (a) Regulation.-- Every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the commission. Only public utility service being furnished or rendered by a municipal corporation, or by the operating agencies of any municipal corporation, beyond its corporate limits, shall be subject to regulation and control by the commission as to rates, with the same force, and in like manner, as if such service were rendered by a public utility.

Regulation of Utility Service Areas

§ 1501. Character of service and facilities.

Every public utility shall furnish and maintain **adequate, efficient, safe, and reasonable service and facilities**, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.

- The PaPUC has promulgated extensive regulations addressing all aspects of the regulation of water and wastewater public utilities:
  - 52 Pa. Code Chapter 65 addresses: accidents, complaints against water utilities, records, service pressures, metered service, water meters, billing and billing disputes, mandatory conservation measures, service discontinuance, temporary service, refusal to serve, system of accounts, design and construction standards, line extensions to customers, customer advance funding and special services.

Regulation of Utility Service Areas

- This is the most comprehensive set of PaPUC regulations addressing water utility operations.
- Requires utilities to submit reports to the PaPUC of “reportable accidents” (usually involving death or serious injury).
- Water utilities must maintain various records in their service territory. Records to be maintained include **current** maps, plans of its entire distribution system showing the size, character and location of each main, street valve and service line and other necessary information.
- Utilities must keep a record of each “prolonged” interruption of service affecting all of a portion of its system.
- Requires that normal operating pressure should not be less than 25 p.s.i.g. and not more than 125 p.s.i.g. at the main, with certain seasonal peak load and hourly maximum demand when pressure cannot be less than 20. p.s.i.g. nor more than 150 p.s.i.g.

Regulation of Utility Service Areas

- Utilities must obtain recording pressure gauges for each separately operated pressure zone on its system for purposes of making required surveys.
- At regular intervals and not less than once a year, water utilities must conduct surveys of pressures in its distribution system at times of maximum or minimum usage.
- Utilities must meter its water service, furnish meters to its customers at the utilities' own expense, and maintain and operate all such meters.
- Customers are required to provide water utilities access to utility meters at reasonable times for purposes of meter maintenance and operation.
- Utilities cannot place in service a water meter with a registration error or more than 2%.
- Depending on the size of the meter, it must be tested at regular intervals.

Regulation of Utility Service Areas

- Customers can request meter inspections and testing and will not be charged for a test if the meter has been in operation for a period longer than specified by the regulations for the size of the meter. For example a ⅝-inch meter should be inspected at least once every 10 years.
- Water utilities must keep accurate and detailed records of meter tests.
- Whenever a meter has been removed from service, it must be tested within 30 days for accuracy to complete that meter's test history.
- Utilities must maintain facilities for testing its meters, but may request permission from the PaPUC to have its meters and instruments certified by a standardizing laboratory approved by the PaPUC.
- Utilities must test customer meters upon written request. A customer must be given the opportunity to be present for the meter test. Unless the fee has been waived (due to the absence of a test within the specified time period), a customer requesting a meter test is required to pay based upon a fee schedule in the regulations.

Regulation of Utility Service Areas

- The PaPUC can also charge water utilities for testing of their meters that the utility's own plant or at the PaPUC's laboratory.
- Meters that are registering more than 4% fast or slow can result in either a refund to the customer or a request for further payment for a period equal to ½ the time elapsed since the last previous test but not to exceed 12 months.
- If there is a disputed with a customer related to billing, the water utility is required to investigate the matter and report the results to the customer under Chapter 56 , Subchapter F of the PaPUC's regulations (relating to disputes, termination disputes, informal and formal complaints).
- If a water utility is experiencing a short term supply shortage it may request general conservation of inside water uses and impose mandatory conservation measures. However, they must file a plant of their contingent mandatory conservation measures with the PaPUC as part for their tariff rules and regulations. The utility is authorized to take actions by adjusting the outside water valve if a customer fails to comply with conversation measures.

Regulation of Utility Service Areas

- A customer vacating a premises must give the water utility at least three days' notice to discontinue water service.
- If a customer requests "temporary" service, a water utility may require the customers to pay the costs of making the service connection and later removing it.
- Under certain circumstances, a water utility has the right to refuse to serve an applicant: (i) if the applicant has not complied with the applicable Pa and municipal regulations and the utility's approved rules and regulations; (ii) the utility does not have adequate facilities to provide the requested service; and (iii) if the applicant's piping to which the service will be attached is reasonably regarded as hazardous or of a character that satisfactory service cannot be given.
- Depending on its annual operating revenue, water public utilities must keep its accounts in conformity with the most recent Uniform System of Accounts prescribed by the National Association of Regulatory Utility Commissioners.

Regulation of Utility Service Areas

- When considering a water utility's rate increases and setting just and reasonable rates, the PaPUC will look at how well the utility has:
  i. provided customers educational material about efficient water use practices, the expense associated with leaking plumbing fixtures and possible savings on water and fuel bills that could result from implementing conservation measures;
  ii. provided annually to large non-residential customers, information regarding the availability of the large water user audit procedure developed by the DEP;
  iii. provided annual customer information about installing water-savings plumbing fixtures in new construction or remodeling;
  iv. levels of unaccounted for water should be kept "within reasonable amounts";
  v. a leak detection system should be used on a regular basis;
  vi. a comprehensive metering plan should be in place; and
  vii. the mandatory conservation contingency plan should be filed within each water utility's tariff.

Regulation of Utility Service Areas

- Each water utility as part of its tariff must establish rules for extending supply to applicants in its service area.
- No customer advance for a line extension is required if the annual revenue from the line extension will equal or exceed the utility's annual line extension costs.

- 52 Pa. Code § 69.711 contains the PaPUC's Policy Statement regarding the incentives to acquire "small non-viable water and wastewater systems":
  - Designed to encourage mergers and acquisitions for water utilities and foster regionalization
  - Criteria Before Incentives are Applicable:
    - The proposed water system acquisition must serve the general public interest;
    - The acquiring utility must have the managerial, technical and financial capabilities to adequately operate the acquired system consistent with the Public Utility Code, the Pa Safe Drinking Water Act and other legal requirements.

Regulation of Utility Service Areas

- The water system to be acquired must have less than 3,300 customer connections, be non-viable, be in violation of legal standards concerning the safety adequacy, efficiency or reasonableness of service and facilities and has failed to comply for a reasonable time period with any order from the PaDEP or the PaPUC.
- The acquired system's ratepayers should be provided with improved service in the future
- The purchase price of the acquisition is fair and reasonable and the acquisition has been conducted via arm's length negotiations.
- Single tariff pricing should be applied to the rates of the acquired system to the extent reasonable. In certain circumstances of extreme rate differences, a phase-in of the rate difference should be considered.
- Possible Acquisition Incentives could include: (i) rate of return premiums (greatly encourage); (ii) credit acquisition adjustment; (iii) debit acquisition adjustment; (iv) deferral of acquisition improvement costs (recover these costs over time since they may be too high to charge customers at one time); (v) plant improvement surcharge.

Regulation of Utility Service Areas

- 52 Pa Code § 69.1601 contains the PaPUC's Statement of Policy regarding Unscheduled Water Service Interruptions and Associated Actions.
  - Purpose is to provide guidance to the water industry on issues relating to unscheduled water service interruptions, primarily the types of notice to the public of such interruptions when "a situation affects water quality or quantity and particularly when water is unsafe to drink."
  - Affected ratepayers should be notified when 2,500 or 5%, whichever is less, of a utility's total ratepayers have an unscheduled service interruption involving a reduction in the quantity of water in a single incident of 6 or more hours.
  - Timely notice of fewer customers is recommended, when practicable.
  - In situations involving water quality, water utilities should follow DEP regulations regarding public notification requirements.

Regulation of Utility Service Areas

- 52 Pa Code § 69.701 contains the PaPUC's Statement of Policy regarding the Viability of Small Water Systems
  - Reflects a recognition by the PaPUC that many small water systems in Pennsylvania are **not** viable and need to be restructured.
  - A viable water system is one that is self-sustaining and has the financial, managerial and technical capabilities to meet both the PaPUC and PaDEP requirements on a long-term basis.
  - Both the PaPUC and PaDEP intend to work closely together to restrict the number of nonviable drinking water systems by discouraging the creation of new nonviable small systems and also encouraging the restructuring of existing nonviable small systems.

Regulation of Utility Service Areas

- To restrict the number of nonviable drinking water systems the following things will be encouraged and supported:
  i. Developing and implementing comprehensive water system facility plans, management plans and financial plans by drinking water systems to allow them to operate on a sound business basis;
  ii. Comprehensive local, county and regional planning to ensure water system viability;
  iii. Restructuring of contiguous and non-contiguous drinking water systems to form a single viable water system or authority;
  iv. Encourage PennVest and other financial aid sources to support viable drinking water systems; and
  v. Develop safety net programs to address nonviable or abandoned water systems.

- 52 Pa Code §§ 3.501 and 3.502 address obtaining a certificate of public convenience as a water supplier or wastewater collection, treatment or disposal provider.
- More on this process in the next section.

Regulation of Utility Service Areas

- 52 Pa. Code § 69.1101 contains the PaPUC's Statement of Policy indicating that it will "consider the impact of its decisions upon local comprehensive plans and zoning ordinances." This Statement of Policy explicitly recognizes that the PaPUC's actions/decisions are often in the context of laws and policies impacting local zoning and governance, both of which cannot be ignored with respect to water utility service and operations.
- 52 Pa. Code § 69.721 contains the PaPUC's Statement of Policy regarding the rate incentives to encourage the regionalization of water and wastewater systems in Pennsylvania.
  - Recognizes that further consolidation of water and wastewater systems in Pennsylvania may result in greater environmental and economic benefits to customers.
  - Lays out the PaPUC's guidance regarding the acquisition of viable water and wastewater systems.

Regulation of Utility Service Areas

- Allows an acquiring water utility to request the value of the used and useful assets of the acquired utility be included in the acquirer's rate base;
- The assets of the acquired system should be booked at the original cost of the acquired system less applicable accrued depreciation;
- An acquiring utility can use various methods to support its valuation of the original cost of the used and useful assets of the acquired water or wastewater system;
- An acquiring utility does not need to supply to the PaPUC a full original cost plant-in-service study to determine the value of the acquired system; and
- An acquiring utility is required to exercise due diligence and make reasonable attempts to obtain from the seller documents relating to the original cost of the assets.

Application and Permitting Process for Service Areas

Application and Permitting Process for Service Areas

- Section 1102 of the Public Utility Code requires obtaining a **certificate of public convenience** (CPC) to begin to supply water service in the Commonwealth of Pennsylvania or to supply water service to a different territory than was previously authorized. Receipt of the CPC confers "public utility" status on the applicant.
- Abandonment of previously certificated service (except for bill nonpayment) must also first receive a CPC.
- I would like to begin providing water service as a public utility (or become a larger or smaller public utility). What do I do now?
- File an "Application" with the PaPUC and obtain any required PaDEP permits and authorizations!

Application and Permitting Process for Service Areas

- PaPUC general regulations on filings (52 Pa. Code §5.12) describe "applications" as requiring: A clear and concise statement of the authorization sought; the legal basis for the request (*i.e.*, PaPUC jurisdiction); background on the entity applying; and contact information for the applicant's representative.
- Applications for water authority must be published in the *Pennsylvania Bulletin*.
- Other forms of notice that the Application has been filed may be required by the PaPUC Secretary (Rosemary Chiavetta) such as newspaper publication, and/or service of the application on "interested" or "affected" persons.

Application and Permitting Process for Service Areas

- The PaPUC does not prescribe detailed requirements for the contents of **gas** and **electric** public utility applications for new or changed service.
- In contrast, historically going back to the 1970s, the PaPUC has provided more specific guidance to applicants for water (or wastewater) CPC's by providing specific guidance on the contents of applications, including regulations specifically addressing the contents of water/wastewater applications, sample application forms and sample initial tariffs.

Application and Permitting Process for Service Areas

- Water/wastewater applications for CPCs
  - Regulations on application contents at 52 Pa. Code §§ 3.501-3.502.
  - Sample water/wastewater application form for CPC's found on the PaPUC website: http://www.puc.state.pa.us/filing_resources/water_online_forms.aspx
  - Sample initial tariff for water service located at the same PaPUC webpage. *See* Appendix 1 (sample water CPC Application Form) and Appendix 2 (sample initial water service tariff) in your materials.

Application and Permitting Process for Service Areas

- Water/wastewater application contents required by regulations (§§ 3.501-3.502).
  - Copy of the required PaDEP business plan per 25 Pa. Code § 109.503(a)(3) relating to public water system construction permits.
  - Description of proposed facilities, the manner and timing of construction, cost of construction and source of funds used to construct the plant. Additional information on existing facilities required if the application is for an expansion of existing service.
  - Map of the service area showing: boundaries of the service territory, course/distance or metes/bounds description, location or route of the facilities, schedule for installation of facilities, elevations of major facilities and service area, PaDEP permitted productive or treatment capacity of sources or treatment facility, pipe sizes and material used.

Application and Permitting Process for Service Areas

- Customer information: estimates of number of customer connections and estimates of water usage (treated) after one, five and ten years.
- Adequacy of facilities: information demonstrating that the applicant has the ability to provide adequate water supply (including access to bulk sales of water), treatment, storage and distribution capacity to meet present and future customer needs.
- Rate information: a proposed tariff showing rates (by rate schedule), rules and conditions for service.
- Cost of providing service: one, five and ten year estimates of operating revenues, O&M expenses, annual depreciation and taxes. Additional information required if the applicant is already providing certificated service and has been operating at a loss.

Application and Permitting Process for Service Areas

- Proof of PaDEP Compliance regarding design, construction and operation.
- If applicable, copies of public water supply/water quality management or National Pollution Discharge Elimination System (NPDES) permits.
- Valid certificated operator certificates.
- A five year PaDEP compliance history with explanations of any prior violations.
- A five year PaDEP compliance history on any other public utilities owned by the applicant, including affiliates.
- Documentation of compliance with any applicable requirements of: DRBC, SRBC, ORBC and the Great Lakes Commission, state/county/local comprehensive plans.

Application and Permitting Process for Service Areas

- Identity of “affected” persons: identify other public utilities, municipalities, authorities, associations and cooperatives that provide public water/wastewater service in or directly adjacent to the municipalities where service is proposed or within one mile of applicant’s facilities.
- If other water suppliers are available to the proposed service territory, provide proof that the cost/quality of applicant’s service is better for customers.
- A verification that water sources and customers will be metered.

Application and Permitting Process for Service Areas

- Miscellaneous requirements.
  - Payment of $350 dollar filing fee.
  - An **affidavit** showing service of the application on: every municipality and planning office in the proposed service territory up to and including the county level, other public water entities within one mile of the service territory, the Bureau of Investigation & Enforcement, the Office of Consumer Advocate and the Office of Small Business Advocate (collectively the "statutory advocates").
  - A signed verification of the entire application.

Application and Permitting Process for Service Areas

- The sample application form (Appendix 1) tracks §§ 3.501-3.502 very closely.
- The PaPUC reserves the right to modify notice requirements on a case-by-case basis. The current sample application requires PA Bulletin notice, two-week publication in a newspaper of general circulation in the service territory and notification of existing customers (if service is already being provided).

Application and Permitting Process for Service Areas

- Now that I've prepared and filed an application, gotten it accepted for filing, paid the filing fee, served the filing on the statutory advocates and given the notices required by regulations and the Secretary of the Commission, what happens?
  - The purpose of the PaPUC notice requirements is to determine if persons affected by the application believe their interests will be adversely affected from approval of the requested CPC.
  - If a person files a "protest" of the application, the application will be sent to the PaPUC's Office of Administrative Law Judge (OALJ). The OALJ will assign the case to an ALJ who only works on PaPUC cases.

Application and Permitting Process for Service Areas

- The ALJ process is an administrative ‘trial” of the merits of an application. Depending on the number of Protestants and the issues being raised against the application, the trial can last a few months or up to a year.
- Administrative counsel is needed to handle the trial and cases can involve discovery, expert testimony, hearings where expert witnesses testify and evidence is received into the record, briefs and exceptions/replies to exceptions. The PaPUC votes on a final decision at a public meeting.
- You do not want your application protested.

Application and Permitting Process for Service Areas

- Process for un-protested applications.
  - PaPUC staff will commence a review of supporting materials.
  - Data requests directed to the applicant requesting supplemental information are common.
  - Staff will make it clear if the supplemental information is adequate.
  - Staff will submit a recommendation to the PaPUC for review and a vote at a public meeting.
- Last minute roadblocks.
  - Before the PaPUC staff recommends approval of any requested authorizations, it will check if the applicant “owes” the PaPUC anything.
  - Typical issues are amounts owed for fines, annual regulatory assessments or required annual reports.
  - The PaPUC may “condition” approval of the application.

Utility Construction Design Standards and Approvals

Utility Construction Design Standards and Approvals

- The American Water Works Association ("AWWA") is the main promulgator of standards for water utilities
  - The AWWA defines "standard" as "minimum best practices representing a consensus of the water supply industry that a product described in a standard will provide satisfactory service when used in North America"
  - Anyone may propose a product for standardization, but it must meet the following qualifications:
    - Within the scope of the AWWA standards program
    - Water community must benefit from the standard
    - The product must have a five-year history of documented satisfactory use in an established water utility
    - The product that the standard describes must be available for purchase in North America

Utility Construction Design Standards and Approvals

- List of AWWA standards-approved products and equipment?
  - AWWA does not provide a list – instead AWWA standards used as a guide for product manufacturing. AWWA does not certify specific products that meet their standards.
- AWWA standards have been developed in 21 categories:
  - Groundwater and wells
  - Filtration
  - Softening
  - Disinfection Chemicals
  - Coagulation
  - Scale and Corrosion Control
  - Taste and Odor Control
  - Ductile-Iron Pipe and Fittings
  - Steel Pipe
  - Concrete Pipe
  - Asbestos-Cement Pipe
  - Valves and Hydrants
  - Pipe Installation
  - Disinfection of Facilities
  - Meters
  - Service Lines
  - Plastic Pipe
  - Storage
  - Plant Equipment
  - Utility Management

Utility Construction Design Standards and Approvals

- Specific examples of AWWA standards are not published online, but they may be purchased at http://www.awwa.org/bookstore.
- The AWWA, along with the American Society of Civil Engineers ("ASCE") and the Water Environment Federation ("WEF") promulgated a Draft American National Standard for Trial Use ("DSTU").
  - This DSTU applies to physical securities for facilities used in potable water source, distribution systems, and treatment.
  - AWWA performed the research for the drinking water supply, treatment, and distribution systems report; WEF did research regarding wastewater and storm water collection, treatment, and disposal systems; and ASCE researched the methodology and characteristics pertinent to design of contaminant detection and monitoring systems for both water and wastewater systems.

Utility Construction Design Standards and Approvals

- General examples of design standards include:
  - Water system design criteria;
  - Gravity sewer design criteria;
  - Force main design criteria;
  - Wastewater pump station design criteria;
  - Cross connection control; and
  - Roadway design criteria.

Utility Construction Design Standards and Approvals

- General examples of construction requirements include:
  - Site preparation, surface removal, and restoration;
  - Excavation, backfill, compaction, and grading;
  - Boring and jacking and directional drilling;
  - Pressure pipe restraints; and
  - Pressure pipe connections.

Utility Construction Design Standards and Approvals

- The PaPUC has promulgated certain rules on water facility design and construction that in part provide:
  - The design of a water utility's water plant must conform to “standard acceptable engineering practices”, DEP standards regarding sanitation and potability of water and provide reasonably adequate and safe service to its customers.
  - The water utility’s distribution system must be designed to maintain the minimum pressures required by the PaPUC’s regulations.
  - A water utility’s service lines must conform to its size, design, material and installation requirements.
  - The materials and specifications allow metallic and nonmetallic materials to be used separately and in combination to construct component parts of a water system.

Utility Construction Design Standards and Approvals

- The material must have a reasonable and useful life, must not cause the “water to become impure, unwholesome, unpotable or unhealthful.”
- Material and equipment must be selected to minimize corrosion, electrolysis and deterioration.
- The PaPUC does not desire to discourage the use of newly developed materials so long as the utility provides safe and reliable service. The PaPUC expressly intends to provide general guidance to water utilities and to allow them discretion in the selection of proper materials and equipment.
- Steel pipe used in water transmission and distribution systems must be lined inside and coated and wrapped outside to conform with minimum specifications of the American Water Works Association or equivalent standards.

Utility Construction Design Standards and Approvals

- Construction of water utility plant must conform to “standard acceptable engineering practices and must be operated to provide reasonably adequate and safe service to customers.
- Water plant construction must also conform to the requirements of the DEP relating to sanitation and potability of water.
- Mains must be installed below the frost line whenever possible. Minimum cover must be at least three feet whenever possible.
- Dead ends in the mains of the distribution system should be avoided. Mains with dead ends must be flushed as often as necessary to maintain proper water quality.
- Valve intervals in distribution mains designed and used primarily as transmission lines cannot exceed 4,000 feet.

Utility Construction Design Standards and Approvals

- Whenever feasible, the water distribution system must be laid out in a segmented grid to minimize service interruptions to customers in case of breaks or leaks.
- The utility's service lines should be installed below the frost line, "whenever feasible."

Current Issues in Water/ Wastewater Service Area Regulation

Current Issues in Water/Wastewater Service Area Regulation

- Three current issues – all driven by legislation enacted by the PA General Assembly:
  - Act 12 of 2016.
  - Senate Bill 881.
  - Act 11 0f 2012.

Current Issues in Water/Wastewater Service Area Regulation

- Act 12 of 216 promulgated new Section 1329 of the Public Utility Code.
  - Applies to acquisitions of municipal or authority water/wastewater systems where buyer and seller agree voluntarily to value for ratemaking purposes systems that will be regulated by the PaPUC as a public utility.
  - Utility valuation experts will appraise the system to establish its “fair market value” (FMV). FMV is the average of two utility valuation expert appraisals. Buyer and seller also select one licensed engineer to assess the assets.
  - If used, this process expands the information that must be included in the CPC application to include: copies of two independent appraisals by “utility valuation experts” selected (one by buyer, one by seller) from a list maintained by the PaPUC; the system purchase price; the proposed rate base; a proposed tariff showing continuation of existing rates and a rate stabilization plan, if applicable.
  - Act 12 promotes transactions by providing an alternative valuation method to the traditional depreciated original cost valuation method.

Current Issues in Water/Wastewater Service Area Regulation

- Senate Bill 881.
  - This legislation resolved an important legal issue – whether systems that conveyed storm water and comingled it with sewage, so called “combined systems”, were providing wastewater public utility service subject to the PaPUC’s jurisdiction.
  - The Bill amended the definition of “wastewater” to include: “industrial waste”, “infiltration or inflow into sewers”, “other water containing solids or pollutants” and “storm water which is or will become mixed with [sewage, industrial waste, infiltration, water containing solids/pollutants] within a combined system.”
  - Storm water that is collected separately and does not flow into a combined system is not classified as “wastewater”.

Current Issues in Water/Wastewater Service Area Regulation

- The lead case example on the issue of how costs will be allocated and rates designed when a “combined system” becomes a public utility is the case law developing on Pennsylvania American Water Company’s acquisition of the Sewer Authority of the City of Scranton, approved by the PaPUC in 2016 at Docket No. A-2016-2537209.
- The PaPUC may be addressing whether combined system stormwater service costs should be separately identified and billed under a different rate design than sanitary type sewer service.

Current Issues in Water/Wastewater Service Area Regulation

- Act 11 of 2012 provides PaPUC jurisdictional water, wastewater, electric distribution and gas distribution public utilities with a distribution system improvement charge (DSIC) rate option that collects reasonable and prudent costs to improve, repair or replace eligible distribution property that is part of a public utility's plant.
  - A precondition to implementation of a DSIC is that the public utility file a Long-Term Infrastructure Improvement Plan (LTIIP) with the PaPUC.
  - Key PaPUC documents implementing Act 11 (in addition to individual utility decisions) are: the Final Act 11 Implementation Order at Docket No. M-2012-2293611 (August 2, 2012); and the PaPUC rulemaking on the LTIIP at L-2012-2317274 (May 5, 2014).
  - DSIC filings allow public utilities to increase rates between rate cases. Extensive supporting information for the computation of the DSIC is required, including description of the new property, all rate computations, an LTIIP, certification a base rate case has occurred within 5 years and other information as required by the PaPUC.

Current Issues in Water/Wastewater Service Area Regulation

- DISC/LTIIP Filings.
  - LTIIP filings require:
    1) extensive information on eligible property,
    2) repair and replacement schedules,
    3) estimates of property to be improved,
    4) annual expenses and cost effectiveness measures,
    5) description of how aging infrastructure will be replaced on an accelerated basis,
    6) workforce management and training, and
    7) outreach with other utilities, PennDOT and local government.

The Buchanan Team

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John focuses his practice on administrative law matters with special emphasis on energy, communications, water/wastewater and transportation public utility law. His practice ranges from proactive counseling to litigation before administrative agencies, and appellate matters before state and federal courts. With nearly 20 years of service for the Pennsylvania Public Utility Commission (PaPUC), John has significant regulatory experience in electricity, natural gas, water, transportation and communications law.

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Alan focuses his practice on electric and gas matters. He has actively represented public utilities and other stakeholders before the Pennsylvania Public Utility Commission, particularly in the areas of electricity, gas, water and transportation. His current emphasis is on obtaining the state regulatory approvals for the merger or acquisition of gas and electric utilities, and addressing the real estate, regulatory and financing phases of renewable energy project development.

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Brian advises clients in energy and public utility transactional and regulatory matters, as well as environmental issues. Brian has appeared before state and federal courts, PaPUC and the Pennsylvania Environmental Hearing Board, achieving desired outcomes. In addition to his energy and environmental track record, Brian's experience extends to a growing litigation practice. He represents clients across a broad spectrum of legal concerns, including contract matters, workman's compensation and shareholder disputes.

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